

total cost of \$25,000,000 or more and requirement that recipient of assistance for a project with an estimated total cost of \$1,000,000,000 or more submit an annual financial plan for the project.

1998—Pub. L. 105-178, §1305(a)(1), substituted “Project approval and oversight” for “Plans, specifications, and estimates” in section catchline.

Subsecs. (a) to (d). Pub. L. 105-178, §1305(a)(3), added subsecs. (a) to (d) and struck out former subsecs. (a) to (d) which related to requirement for State highway departments to submit to Secretary for approval plans, specifications, and estimates for each proposed highway project, special rules relating to resurfacing, restoring, and rehabilitating projects on National Highway System, to low-cost National Highway System projects, and to non-National Highway System projects, limitation on estimates for construction engineering, and provisions relating to value engineering or other cost reduction analysis.

Subsec. (e). Pub. L. 105-178, §1305(a)(3), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 105-178, §1305(c), added subsec. (f) and struck out former subsec. (f) which read as follows:

“(f) LIFE-CYCLE COST ANALYSIS.—

“(1) ESTABLISHMENT.—The Secretary shall establish a program to require States to conduct an analysis of the life-cycle costs of each usable project segment on the National Highway System with a cost of \$25,000,000 or more.

“(2) ANALYSIS OF THE LIFE-CYCLE COSTS DEFINED.—In this subsection, the term ‘analysis of the life-cycle costs’ means a process for evaluating the total economic worth of a usable project segment by analyzing initial costs and discounted future costs, such as maintenance, reconstruction, rehabilitation, restoring, and resurfacing costs, over the life of the project segment.”

Pub. L. 105-178, §1305(a)(2), redesignated subsec. (e) as (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 105-178, §1305(a)(2), redesignated subsec. (f) as (g).

Subsec. (h). Pub. L. 105-178, §1305(b), added subsec. (h).

1995—Subsecs. (e), (f). Pub. L. 104-59 added subsecs. (e) and (f).

1991—Subsec. (a). Pub. L. 102-240, §1016(b)(1), inserted “this section and” before “section 117”.

Subsec. (b). Pub. L. 102-240, §1016(b)(2), added subsec. (b) and struck out former subsec. (b) which read as follows: “In addition to the approval required under subsection (a) of this section, proposed specifications for projects for construction on (1) the Federal-aid secondary system, except in States where all public roads and highways are under the control and supervision of the State highway department, and (2) the Federal-aid urban system, shall be determined by the State highway department and the appropriate local road officials in cooperation with each other.”

Subsec. (c). Pub. L. 102-240, §1018(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “Items included in any such estimate for construction engineering shall not exceed 15 percent of the total estimated cost of a project financed with Federal-aid highway funds, after excluding from such total estimate cost, the estimated costs of rights-of-way, preliminary engineering, and construction engineering.”

1987—Subsec. (c). Pub. L. 100-17 substituted “15 percent” for “10 per centum” and struck out at end “However, this limitation shall be 15 per centum in any State with respect to which the Secretary finds such higher limitation to be necessary.”

1976—Subsec. (c). Pub. L. 94-280 substituted “Federal-aid highway funds” for “Federal-aid primary, secondary, or urban funds” and “such total estimate cost” for “such total estimated cost” and struck out 10 per centum limitation for any project financed with interstate funds.

1970—Subsec. (b). Pub. L. 91-605, §106(e), inserted reference to the Federal-aid urban system.

Subsec. (d). Pub. L. 91-605, §142, added subsec. (d).

1963—Subsec. (c). Pub. L. 88-157 substituted “a project financed with Federal-aid primary, secondary, or urban funds” for “the project” and provided for limitation, on items included in estimates for construction engineering on projects financed with Federal-aid primary, secondary, or urban funds, of 15 percent of total estimated cost of the project where found by the Secretary to be necessary and for 10-percent limitation on projects financed with interstate funds.

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as a note under section 104 of this title.

#### STUDY OF VALUE ENGINEERING

Section 1091 of Pub. L. 102-240 provided that:

“(a) STUDY.—The Secretary shall study the effectiveness and benefits of value engineering review programs applied to Federal-aid highway projects. Such study shall include an analysis of and the results of specialized techniques utilized in all facets of highway construction for the purpose of reduction of costs and improvement of the overall quality of Federal-aid highway projects.

“(b) REPORT.—Not later than 1 year after the date of the enactment of this Act [Dec. 18, 1991], the Secretary shall report to Congress on the results of the study under subsection (a), including recommendations on how value engineering could be utilized and improved in Federal-aid highway projects.”

#### MODIFICATION OF PROJECT AGREEMENTS TO EFFECTUATE REQUIREMENT OF FOUR-LANES OF TRAFFIC

Pub. L. 89-574, §5(b), Sept. 13, 1966, 80 Stat. 767, as amended by Pub. L. 97-449, §2(a), Jan. 12, 1983, 96 Stat. 2439, authorized Secretary to modify project agreements entered into prior to Sept. 13, 1966, pursuant to section 106 of this title for purpose of effectuating amendment made by this section (amending section 109(b) of this title to add a requirement of four lanes of traffic) with respect to as much of National System of Interstate and Defense Highways [now Dwight D. Eisenhower System of Interstate and Defense Highways] as may be possible.

#### § 107. Acquisition of rights-of-way—Interstate System

(a) In any case in which the Secretary is requested by a State to acquire lands or interests in lands (including within the term “interests in lands”, the control of access thereto from adjoining lands) required by such State for right-of-way or other purposes in connection with the prosecution of any project for the construction, reconstruction, or improvement of any section of the Interstate System, the Secretary is authorized, in the name of the United States and prior to the approval of title by the Attorney General, to acquire, enter upon, and take possession of such lands or interests in lands by purchase, donation, condemnation, or otherwise in accordance with the laws of the United States (including sections 3114 to 3116 and 3118 of title 40), if—

(1) the Secretary has determined either that the State is unable to acquire necessary lands or interests in lands, or is unable to acquire such lands or interests in lands with sufficient promptness; and

(2) the State has agreed with the Secretary to pay, at such time as may be specified by the

Secretary an amount equal to 10 per centum of the costs incurred by the Secretary, in acquiring such lands or interests in lands, or such lesser percentage which represents the State's pro rata share of project costs as determined in accordance with subsection (c)<sup>1</sup> of section 120 of this title.

The authority granted by this section shall also apply to lands and interests in lands received as grants of land from the United States and owned or held by railroads or other corporations.

(b) The costs incurred by the Secretary in acquiring any such lands or interests in lands may include the cost of examination and abstract of title, certificate of title, advertising, and any fees incidental to such acquisition. All costs incurred by the Secretary in connection with the acquisition of any such lands or interests in lands shall be paid from the funds for construction, reconstruction, or improvement of the Interstate System apportioned to the State upon the request of which such lands or interests in lands are acquired, and any sums paid to the Secretary by such State as its share of the costs of acquisition of such lands or interests in lands shall be deposited in the Treasury to the credit of the appropriation for Federal-aid highways and shall be credited to the amount apportioned to such State as its apportionment of funds for construction, reconstruction, or improvement of the Interstate System, or shall be deducted from other moneys due the State for reimbursement from funds authorized to be appropriated under section 108(b) of the Federal-Aid Highway Act of 1956.

(c) The Secretary is further authorized and directed by proper deed, executed in the name of the United States, to convey any such lands or interests in lands acquired in any State under the provisions of this section, except the outside five feet of any such right-of-way in any State which does not provide control of access, to the State transportation department of such State or such political subdivision thereof as its laws may provide, upon such terms and conditions as to such lands or interests in lands as may be agreed upon by the Secretary and the State transportation department or political subdivisions to which the conveyance is to be made. Whenever the State makes provision for control of access satisfactory to the Secretary, the outside five feet then shall be conveyed to the State by the Secretary, as herein provided.

(d) Whenever rights-of-way, including control of access, on the Interstate System are required over lands or interests in lands owned by the United States, the Secretary may make such arrangements with the agency having jurisdiction over such lands as may be necessary to give the State or other person constructing the projects on such lands adequate rights-of-way and control of access thereto from adjoining lands, and any such agency is directed to cooperate with the Secretary in this connection.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 892; Pub. L. 105-178, title I, § 1212(a)(2)(A)(i), June 9, 1998, 112 Stat. 193; Pub. L. 109-284, § 3(1), Sept. 27, 2006, 120 Stat. 1211.)

<sup>1</sup> See References in Text note below.

#### REFERENCES IN TEXT

Subsection (c) of section 120 of this title, referred to in subsec. (a)(2), was struck out and a new subsec. (c) was added by Pub. L. 102-240, title I, § 1021(a), Dec. 18, 1991, 105 Stat. 1950.

The Federal-Aid Highway Act of 1956, referred to in subsec. (b), is act June 29, 1956, ch. 462, 70 Stat. 374. For complete classification of this Act to the Code, see Tables. Section 108(b) of the Federal-Aid Highway Act of 1956 is set out as a note under section 101 of this title.

#### AMENDMENTS

2006—Subsec. (a). Pub. L. 109-284 substituted “sections 3114 to 3116 and 3118 of title 40” for “the Act of February 26, 1931, 46 Stat. 1421”.

1998—Subsec. (c). Pub. L. 105-178 substituted “State transportation department” for “State highway department” in two places.

### § 108. Advance acquisition of real property

#### (a) IN GENERAL.—

(1) AVAILABILITY OF FUNDS.—For the purpose of facilitating the timely and economical acquisition of real property for a transportation improvement eligible for funding under this title, the Secretary, upon the request of a State, may make available, for the acquisition of real property, such funds apportioned to the State as may be expended on the transportation improvement, under such rules and regulations as the Secretary may issue.

(2) CONSTRUCTION.—The agreement between the Secretary and the State for the reimbursement of the cost of the real property shall provide for the actual construction of the transportation improvement within a period not to exceed 20 years following the fiscal year for which the request is made, unless the Secretary determines that a longer period is reasonable.

(b) Federal participation in the cost of rights-of-way acquired under subsection (a) of this section shall not exceed the Federal pro rata share applicable to the class of funds from which Federal reimbursement is made.

#### (c) EARLY ACQUISITION OF RIGHTS-OF-WAY.—

(1) GENERAL RULE.—Subject to paragraph (2), funds apportioned to a State under this title may be used to participate in the payment of—

(A) costs incurred by the State for acquisition of rights-of-way, acquired in advance of any Federal approval or authorization, if the rights-of-way are subsequently incorporated into a project eligible for surface transportation program funds; and

(B) costs incurred by the State for the acquisition of land necessary to preserve environmental and scenic values.

(2) TERMS AND CONDITIONS.—The Federal share payable of the costs described in paragraph (1) shall be eligible for reimbursement out of funds apportioned to a State under this title when the rights-of-way acquired are incorporated into a project eligible for surface transportation program funds, if the State demonstrates to the Secretary and the Secretary finds that—

(A) any land acquired, and relocation assistance provided, complied with the Uni-